SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL:	CS/SB 1056
SPONSOR:	Judiciary Committee and Senators Klein and Lynn
SUBJECT:	Business Entities
DATE:	April 1, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siebert	Cooper	CM	**Fav/6 amendments**
2.	Chinn	Maclure	JU	**Fav/CS**
3.			GE	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 1056 replaces the Florida Revised Uniform Limited Partnership Act (1986) with the Florida Revised Uniform Limited Partnership Act (2005), to incorporate reforms from the model act developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and modified by the Florida Bar. The committee substitute also incorporates some of these organizational and administrative reforms into provisions relating to other business entities regulated by the state (corporations, limited liability companies, not-for-profit corporations, and partnerships). This includes harmonization of the merger and conversion provisions, to allow the conversion of business entities from one form to another in a one-step process.

This committee substitute substantially amends the following sections of the Florida Statutes: 607.11101, 607.1302, 608.407, 608.4225, 608.438, 608.4381, 608.4382, 608.4383, 608.439, 608.452, 617.0302, 617.0505, 620.8103, 620.8105, 620.81055, and 620.9104.

This committee substitute creates the following sections of the Florida Statutes: 607.1112, 607.1113, 607.1114, 607.1115, 608.4351, 608.4352, 608.4353, 608.4354, 608.4356, 608.4357, 608.43575, 608.4358, 608.43585, 608.4359, 608.43595, 608.4401, 608.4402, 608.4403, 608.4404, 617.1108, 620.1101, 620.1102, 620.1103, 620.1104, 620.1105, 620.1106, 620.1107, 620.1108, 620.1109, 620.1110, 620.1111, 620.1112, 620.1113, 620.1114, 620.1115, 620.1116, 620.1117, 620.1118, 620.1201, 620.1202, 620.1203, 620.1204, 620.1205, 620.1206, 620.1207, 620.1208, 620.1209, 620.1210, 620.1301, 620.1302, 620.1303, 620.1304, 620.1305, 620.1306, 620.1401, 620.1402, 620.1403, 620.1404, 620.1405, 620.1406, 620.1407, 620.1408, 620.1501, 620.1502, 620.1503, 620.1504, 620.1505, 620.1506, 620.1507, 620.1508, 620.1509, 620.1601, 620.1602, 620.1603, 620.1604, 620.1605, 620.1606, 620.1607, 620.1701, 620.1702, 620.1703,

620.1704, 620.1801, 620.1802, 620.1803, 620.1804, 620.1805, 620.1806, 620.1807, 620.1808, 620.1809, 620.1810, 620.1811, 620.1812, 620.1813, 620.1901, 620.1902, 620.1903, 620.1904, 620.1905, 620.1906, 620.1907, 620.1908, 620.1909, 620.1910, 620.2001, 620.2002, 620.2003, 620.2004, 620.2005, 620.2101, 620.2102, 620.2103, 620.2104, 620.2105, 620.2106, 620.2107, 620.2108, 620.2109, 620.2110, 620.2111, 620.2112, 620.2113, 620.2114, 620.2115, 620.2116, 620.2117, 620.2118, 620.2119, 620.2120, 620.2121, 620.2122, 620.2123, 620.2124, 620.2125, 620.2201, 620.2202, 620.2203, 620.2204, 620.2205, 620.8911, 620.8912, 620.8913, 620.8914, 620.8915, 620.8916, 620.8917, 620.8918, 620.8919, 620.8920, 620.8921, 620.8922, and 620.8923.

This committee substitute repeals the following sections of the Florida Statutes: 608.4384, Part 1 of ch. 620, (The Florida Revised Uniform Limited Partnership Act, 1986), 620.8901, 620.8902, 620.8903, 620.8904, 620.8905, 620.8906, 620.8907, and 620.8908.

II. Present Situation:

Regulation of Business Entities in Florida

Florida businesses are organized into general categories:

- Corporations (ch. 607, F.S.);
- Limited Liability Companies (ch. 608, F.S.);
- Not-For-Profit Corporations (ch. 617, F.S.);
- Limited Partnerships (Part 1, ch. 620, F.S., which is the Florida Revised Uniform Limited Partnership Act, 1986); and
- Partnerships (Part II, ch. 620, F.S, which is the Revised Uniform Partnership Act, 1995).

These chapters regulate the formation, operation, merger, conversion, and dissolution of these types of Florida businesses.

Conversion of Business Entities

Current law allows for the merger of Florida corporations[1], limited partnerships[2], general partnerships[3], and limited liability companies[4] and the conversion of limited or general partnerships[5] and limited liability companies.[6] However, the laws governing these types of transactions are not consistent and often multiple transactions are required to convert one business entity into another form (for instance, the conversion of a corporation into a limited liability company or into a limited partnership).

[1] See ss. 607.1101 and 617.1101, F.S.
[2] See s. 620.201, F.S.
[3] See s. 620.8905, F.S.
[4] See s. 608.438, F.S.
[5] See ss. 620.8902 and 620.8903, F.S.
[6] See s. 608.439, F.S.

The Florida Revised Uniform Limited Partnership Act

Florida adopted the Uniform Limited Partnership Act in 1943 and adopted the Florida Revised Uniform Limited Partnership Act (FRULPA) in 1986. The 1986 act is modeled on an amended uniform act released by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1985. Since 1997, NCCUSL has been revising the act, resulting in a "RE-RULPA" released in 2001. It has been adopted in four states and has been endorsed by the American Bar Association. In 2002, the Tax Section of the Florida Bar organized a "RE-FRULPA" drafting committee to review and analyze the 2001 RE-RULPA. During its review process, the committee also considered collateral issues including the harmonization of a new FRULPA with other business organization statutes. The committee presented its recommendation to the governing bodies of the Florida Bar sections, and they approved the adoption of the RE-RULPA, known as the FRULPA-2005, as modified by the committee.

III. Effect of Proposed Changes:

Section 1 creates multiple sections of the Florida Statutes related to **domestic corporations,** to incorporate organizational and administrative reforms implemented in the Florida Revised Uniform Limited Partnership Act of 2005 (FRULPA-2500), created in section 16 of this committee substitute, as developed by NCCUSL and modified by the Florida Bar.

This section creates s. 607.1112, F.S., to provide for the conversion of a domestic corporation into another business entity, including: a limited liability company, a common law or business trust or association, a real estate investment trust, a general partnership, a limited liability partnership, a limited partnership, a limited liability limited partnership, or any other domestic or foreign entity that is organized under a governing law or other applicable law. The corporation may not, however, convert into another corporation or a not-for-profit entity.

The converting corporation is required to convert pursuant to a plan of conversion and to meet the requirements of new s. 607.1112, F.S. The plan of conversion must set forth basic information relating to the converting corporation and the business entity into which it is converting, the terms and conditions of the conversion, all statements required by the laws governing the other business entity, and appropriate documents. The plan must be adopted by the board of directors and shareholders of the domestic converting corporation. This section limits the conversion of a shareholder of the corporation into a general partner of a succeeding general or limited partnership unless the shareholder consents to such conversion.

The committee substitute creates s. 607.1113, F.S., to require the converting corporation to deliver to the Department of State (DOS) a certificate of conversion, stating that the corporation has been converted, and providing detailed information about the conversion, where applicable. The certificate must also include the effective date of the conversion, the address of the principal office of the "other" business entity,[7] a statement that the business entity appoints the DOS as its agent for service of process if the entity is a foreign entity not authorized to transact business in Florida, and a statement that the other business entity has agreed to pay any shareholders having appraisal rights the amount to which they are entitled.

[7] Here "other" business entity refers to the previously existing entity (i.e. the entity before it is converted).

This section creates s. 607.1114, F.S., to provide that a domestic corporation that has been lawfully converted into another business entity is for all purposes the same entity that existed before the conversion, that title to real and other property or any interest therein is vested with the converted entity, and that all liabilities and obligations of the converting corporation transfer to the successor entity (including claims existing or actions pending by or against the converting corporation). If the converted entity is a foreign entity, it is deemed to have consented to the jurisdiction of Florida courts and must appoint the DOS as its agent for service of process. This section also provides that creditors' rights and liens against the converting corporation are not impaired by the conversion. Further, this section provides that the shares, obligations, and other securities, or rights to acquire them, of the converting corporation shall be converted into appropriate interests, obligations, or securities of the converted entity. Accordingly, shareholders of the converting corporation shall have those rights specified in the plan of conversion and shall have appraisal rights as provided by law.

This section creates s. 607.1115, F.S., to authorize certain business entities to convert into a domestic corporation. Business entities that may convert are: a limited liability company, a common law or business trust or association, a real estate investment trust, a general partnership, a limited liability partnership, a limited partnership, a limited liability limited partnership, or any other domestic or foreign entity that is organized under a governing law or other applicable law. The proposed language does not allow the conversion of a corporation or a not-for-profit entity, i.e. one corporation may *not* convert into another corporation.

The conversion of a business entity under this section does not require the "winding up" of the previously existing entity's affairs; rather the conversion has the effect of a continuation of the existence of the previously existing entity.[8] Any conversion must be approved in the manner provided in its governing document.

Section 2 amends s. 607.1302, F.S., to provide that the shareholder appraisal right attaches to shareholders of a domestic corporation when the completion of a conversion of that corporation occurs. Shareholder approval is required for the conversion and the shareholder is entitled to vote on the conversion.

Sections 3 - 5 amend and create multiple sections of the Florida Statutes relating to **limited liability companies,** to incorporate organizational and administrative reforms implemented in the FRULPA-2005, created in section 16 of this bill, as developed by NCCUSL and modified by the Florida Bar.

Section 3 amends s. 608.407, F.S., to provide that the articles of organization filed when a limited liability company is formed may identify one or more persons authorized to serve as a manger or managing member. Additionally, the articles may describe limitations on managing authority. Notice of the managerial status of a company is presumed when the articles state that a company is to be managed by managers or identify managers or managing members. Notice of limitations on a manager or managing member's authority is also presumed when included in the

[8] "Winding up" is the process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution. *Black's Law Dictionary*, West Publishing, 1996, p. 666.

articles, except that any limitation on authority to transfer *real property* must be filed in the office for recording transfers to provide notice to anyone outside of the company. If managerial information has been added or changed by an amendment or restatement of the articles, the notice is not presumed until 90 days after the effective date of such amendment or restatement.

Section 4 amends s. 608.4225, F.S., to provide that, subject to the conflict of interest provisions of s. 608.4226, the duty of loyalty is limited to the duties outlined in statute.[9] The duty of loyalty for each manager and managing member is limited as follows: to account to the company and hold as trustee any property, profit, or benefit derived by such member or managing member in the conduct or winding up of the company or derived from a use by the member of company property; to refrain from dealing with the company in the conduct of the winding up of the company as or on behalf of an adverse party; and to refrain from competing with the company in the conduct of company business before the dissolution of the company.

Section 5 creates s. 608.4351, F.S., to provide definitions.

This section creates s. 608.4352, F.S., to confer on members of a limited liability company an entitlement to appraisal rights and to obtain payment of the fair value of that member's membership interest upon the consummation of a merger of the company if the member has the right to vote on the merger or consummation of a conversion of such company (the "appraisal event"). Appraisal rights are not available for the following membership interests: those listed on the New York Sock Exchange or the American Stock Exchange; those designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or those not listed or designated but issued by a company that has at least 500 members and all membership interests have a market value of at least $10 million.

This section also provides for appraisal rights, notwithstanding the previous limitation, if the members are required by an appraisal event to accept anything other than cash or a proprietary interest of an entity for a membership interest. Appraisal rights are also available if the members' interests in the company or the company's assets are being acquired or converted pursuant to an appraisal event by a person who is, or at any time during the year prior to the approval of the appraisal event was, the beneficial owner of 20 percent or more of the interests in the company entitled to vote on the appraisal event. Appraisal rights are also available if any of the members' interests in the company or the company's assets are being acquired or converted pursuant to an appraisal event by a person who is, or at any time during the year prior to the approval of the appraisal event was, a senior executive of the company or of an affiliate of the company and will receive a financial benefit not generally available to members with certain exceptions. A limited liability company may modify, restrict, or eliminate any of the appraisal rights provided in this section.

This section provides for the assertion of appraisal rights and for the challenge of a completed appraisal event if the event was not effectuated according to law or was procured as a result of fraud or misrepresentation.

[9] The current wording of s. 608.4225, F.S., stating that the duty of loyalty "includes, without limitation," implies that there is no limit to the duty of loyalty, for there could be other duties of loyalty not contemplated by the statute.

This section creates s. 608.4353, F.S., providing that a record member may assert appraisal rights as to fewer than all of the membership interests registered in the record member's name which are owned by a beneficial member, if the record member objects to all of the membership interest owned by the beneficial member. Notification in writing must be given to the limited liability company on behalf of beneficial members who are asserting appraisal rights.

This section creates s. 608.4354, F.S., to require the company to notify members whether they are entitled to appraisal rights if a proposed appraisal event is to be submitted to a vote at a members' meeting. If the company concludes that such rights are or may be available to members, the company must provide a copy of the applicable law along with the meeting notice to members who are entitled to appraisal.[10] In turn, this language in new s. 608.4355, F.S., would require and provide a process for a member to provide notice of his or her intent to demand payment if an appraisal event occurs.

This section creates s. 608.4356, F.S., to provide that the company must notify a member who has provided notice of intent to demand payment of the date the appraisal event became effective and provide the member a form to complete, stating whether he or she accepts the company's offer of the fair value of the member's interest. The notice must be sent to the member no later than 10 days after the date the appraisal event became effective and must give the member notice of when he or she must return the form (no more than 60 days from the date notice was sent). The committee substitute provides additional pertinent information that the company must provide to the member based upon the member's response to the notice.

This section creates s. 608.4357, F.S., to provide that once a member returns the form, he or she loses all rights of membership unless he or she withdraws from the appraisal process by notifying the company in writing by a date set forth in the appraisal notice. A member that fails to execute and return the form is not entitled to payment.

This section creates s. 608.43575, F.S, to provide that if a member accepts the company's offer to pay the fair value of the member's interest, the company shall make payment to the member within 90 days of the receipt of the form or certificates in the case of certificated interests. Upon payment, the member shall cease to have any interest in the membership interest.

This section creates s. 608.4358, F.S., to provide that a member who is dissatisfied with the company's offer must notify the company of the member's estimate of the fair value of the interest and demand payment of the member's estimate plus interest. If the member fails to notify the company of the member's estimate in the timeframe required for a response to the company's offer, the member waives the right to demand payment based upon the member's estimate and is entitled only to the company's initial offer.

This section creates s. 608.43585, F.S, to require the company to commence a court proceeding within 60 days of the date it receives a payment demand from a member when the demand remains unsettled. The company must ask a court to determine the fair value of the membership interest and accrued interest. If the company fails to initiate the proceeding, any member who has made a demand may commence the proceeding. This section provides for venue and requires

[10] Here, "applicable law" denotes ss. 608.4351-608.43595, F.S.

the joinder of all members whose demands remain unsettled as parties to the proceeding. This section requires the company to pay each member the fair value of his or her interest within 10 days after final determination of the proceedings. Upon payment, the member shall cease to have any interest in the membership interests.

This section creates s. 608.4359, F.S., to provide that the court may assess costs against the company, including the costs of any appraisers appointed by the court, and may assess costs against members if the court finds that such members acted arbitrarily, vexatiously, or not in good faith. The court may also assess fees for attorneys and experts against the company if it finds that the company did not comply with law. Attorney and expert fees may also be granted against the company or a member, if the court finds that the party against whom the fees shall be assessed acted arbitrarily, vexatiously, or not in good faith. If the company fails to make a required payment, a member may sue outright and can recover attorneys' fees and costs of suit.

This section creates s. 608.43595, F.S., to limit payments by the company to a member seeking appraisal if the payment would render the company insolvent or if the payment would violate the law. In such a case, the member may withdraw his or her notice of intent to demand payment or retain status as a claimant and be subordinated to the rights of creditors if the company is liquidated. A process for written notice by the member is provided.

Sections 6 - 9 amends sections 608.438, 608.4381, 608.4382, and 608.4383, F.S., to conform definitions, actions on the plan of merger, certificates of merger, the effects of merger, and appraisal rights relating to the merger of a limited liability company, respectively, to the new conversion provisions created in ss. 608.4351-608.43595, F.S.

Section 10 amends s. 608.439, F.S., to conform to the conversion provisions of proposed s. 607.1112, F.S.[11] The revisions relate to definitions, to law authorizing another entity to convert into a domestic limited liability company, and to the plan of conversion.

Section 11 creates ss. 608.4401, 608.4402, 608.4403, and 608.4404, F.S., relating to the conversion of a domestic limited liability company into another business entity. This section mirrors the conversion provisions of a domestic corporation into another business entity provided for in Section 1 of the bill, accounting for the inherent structural and functional differences between corporations and limited liability companies. The language also provides limitations on the amendment of a conversion plan after the plan has been approved by the members of the limited liability company to be converted and allows abandonment of the conversion plan before the plan is filed.

Section 12 amends s. 608.452, F.S., to modify filing of papers for a merger to read that this filing is now a "certificate" as opposed to "articles" of merger and to authorize the DOS to impose a fee of $25 for the filing of a certificate of conversion of a limited liability company.

[11] Proposed new s. 607.1112, F.S. provides for conversion of a domestic corporation into another business entity; s. 608.439, F.S., corresponds with s. 607.1112, F.S., establishing comparable provisions for conversion by providing for conversion of certain entities to a limited liability company.

Section 13 amends s. 617.0302, F.S., to authorize a **not-for-profit corporation** to merge with other business entities, for-profit or not-for-profit, domestic and foreign, if the surviving corporation is not-for-profit or the other business entity has been organized as a not-for-profit entity under the governing statute authorizing the merger.

Section 14 amends s. 617.0505(1), F.S., to provide that a payment for a member's interest in a private club organized as a not-for-profit corporation is not a distribution for purposes of the restriction on not-for-profit corporations paying dividends or distributions.

Section 15 creates s. 617.1108, F.S., to provide that the merger of a not-for-profit corporation is subject to existing ss. 607.1108, 607.1109 and 607.11101, F.S., relating to mergers of domestic corporations and other entities, articles of merger, and effect of merger.

Section 16 creates the **Florida Revised Uniform Limited Partnership Act - 2005** (FRULPA - 2005) in ss. 620.1101 – 620.2205, F.S. It includes 120 new sections of law establishing the FRULPA – 2005. For ease of reading, the major substantive provisions and differences between the new act and the existing act are summarized below. (Parenthetical citations to ch. 620, F.S. in the proposed changes denote where the provisions would appear if the new act is passed.)

Relationship between FRULPA and FRUPA

- Current law (Part 1 of ch. 620, F.S.) has the FRULPA linked to and "piggy-backed" on the Florida Revised Uniform Partnership Act (FRUPA). (s. 620.186, F.S.) Because of the linked nature of the two laws, many legal requirements that are imposed on limited partnerships are contained in the general partnership law and much of the common law that has developed is applied to both limited partnerships and general partnerships.
- The committee substitute would separate the two bodies of law by creating a self-contained statute for FRULPA-2005, but the new section would retain many of the same provisions of FRUPA.

Constructive Notice By Publicly Filed Document

- Current law provides that a certificate of limited partnership is the only notice that the limited partnership exists and that designated general partners are in fact general partners.
- The committee substitute contains current law regarding notice of the existing partnership. Additionally, the committee substitute provides for constructive notice to be deemed to occur (90 days) after appropriate filing of general partner dissociation and of limited partnership dissolution, termination, merger and conversion, and certain restrictions on a general partner. (s. 620.1103, F.S.)

Permitted Business Purposes

- Current law allows a limited partnership to carry on any business that a general partnership may carry on. This may be construed to be limited only to "for-profit" activities.
- The language in the committee substitute allows a limited partnership to carry on any lawful purpose, including any not-for-profit activities. (s. 620.1104, F.S.)

Duration or Term of Limited Partnership

- Current law provides for duration to be specified in the partnership agreement.

- The language in the committee substitute makes duration perpetual unless the partnership agreement provides otherwise. (s. 620.1104, F.S.)

Affidavit Describing Amount of Capital Contributions

- Current law requires an affidavit to be attached to the certificate of limited partnership and updated when changes occur.
- The new statute would no longer require an affidavit stating capital contributions or respective updated affidavits when capital contributions change (a similar requirement for limited liability companies was removed in 1999).

Use of Limited Partner's Name in Partnership

- Current law prohibits the use of a limited partner's name except in special circumstances.
- The new language will allow the use of a limited partner's name and that use will not affect the liability of the limited partner. (s. 620.1108, F.S.)

Limited Partner Liability to Third Parties for Entity Debts

- Under current law, liability may exist if the limited partner participates in the control of the business and the third party reasonably believes that the limited partner is a general partner. Current law also provides a list of "safe harbor" activities that do not constitute participating in the control of the business.
- The language in the committee substitute will shield a limited partner from liability, even if the limited partner participates in the management and control of the partnership. (s. 620.1303, F.S.)

Limited Partner's Duties

- Current law does not specify any duties of a limited partner.
- Under the new language, a limited partner will have no fiduciary duty solely by reason of being a limited partner, but limited partners must discharge their duties and exercise their rights under the partnership agreement and act consistently with obligations of good faith and fair dealing. These obligations are nonwaivable by partnership agreement. If a limited partner takes part in management, his or her fiduciary duties will be limited to the same duties of care and loyalty that would apply to a general partner under the same circumstances. (s. 620.1305, F.S.)

Partner Access to Required Partnership Information

- Current law gives all partners right of access, with no requirement of showing good cause or proper purpose.
- The committee substitute expands the list of required information and provides that a partner does not have to show good cause. However, the partnership agreement may set reasonable restrictions on access and general partners may impose reasonable restrictions on the use of such information. (ss. 620.1304 and 620.1407, F.S.)

Partner Access to Information and Records

- Under current law, limited partners have the right to obtain relevant information upon reasonable demand and general partner rights to the same information are linked to FRUPA.

- Under the language in the committee substitute, limited partners will have the same rights as provided in current law, with the addition of procedures and standards for making a demand for information set out in greater detail and with a requirement added that the limited partnership supply without request known material information whenever limited partner votes or other consents are required. General partners' access rights are made explicit following FRUPA, including the obligation of the limited partnership and general partners to volunteer certain information. The committee substitute also provides access rights to former partners for certain purposes relating to the time when they were partners. (ss. 620.1304 and 620.1407, F.S.)

General Partner Liability for Entity Debts

- Unless the partnership elects limited liability limited partnership (LLLP) status, all general partners are jointly and severally liable for all partnership obligations.
- The committee substitute provides a partnership may select LLLP status in its certificate of limited partnership. LLLP status provides a full liability shield to all general partners. If the limited partnership is not an LLLP, general partners will continue to be jointly and severally liable as provided under current law. (s. 620.1404, F.S.)

General Partner Duties

- Current law links general partner duties to duties of partners in general partnership.
- The committee substitute provides for duties that are essentially the same as under FRUPA but clarifies that non-compete duties continue while winding-up the limited partnership's activities. (s. 620.1408, F.S.)

Capital Contribution Obligations/Allocations of Profits, Losses, and Distributions

- Current law provides that capital contributions may be in the form of cash, property, services, or obligations to provide these in the future, that the obligation of each partner must be in a signed writing, that obligations may not be compromised without all partner consent, and that the partnership agreement may impose severe penalties for breach of the obligation. Current law contains separate provisions for sharing of profits and losses and for sharing of distributions, and in each case they are allocated according to the value of contributions made and not returned.
- The language in the committee substitute is substantially the same except that it provides that the default rule for allocation of profits, losses, and distributions will be in proportion to the total value of contributions actually made by partners (regardless of whether all or part has been returned). (ss. 620.1502 and 620.1503, F.S.)

Partner Liability for Distributions

- Current law provides for a statute of limitations period of six years in cases where a partner received a wrongful distribution and defines wrongful distributions to be those made where partnership liabilities exceed the fair value of assets of the partnership.
- The committee substitute provides a "balance sheet" test for determining whether a distribution is wrongful (looking at liabilities versus assets) as well as an "equity" test, which looks at whether the partnership would be unable to pay debts if the distribution was made. The committee substitute also reduces the limitations period from six to two years. (ss. 620.1508 and 620.1509, F.S.)

Limited Partner Voluntary Dissociation (Right of Withdrawal)

- Under current law, a limited partner may withdraw only if permitted by partnership agreement or certificate, with the limited exception for certain grandfathered partnerships created before 1996.
- The language in the committee substitute will prohibit the right of withdrawal before the termination of the limited partnership, unless the partnership agreement permits or requires withdrawal. (s. 620.1601, F.S.)

Limited Partner Involuntary Dissociation

- Current law does not address this issue.
- The committee substitute sets forth a list of causes of involuntary dissociation, based on those that apply to a general partner under FRUPA. A limited partner may be dissociated by expulsion as provided for in the agreement; by expulsion by judicial determination on an application by the partnership for wrongful conduct, breach of the agreement, or by conduct making it unreasonable to carry on the partnership; by corporate dissolution; or death, among other reasons. (s. 620.1601, F.S.)

Limited Partner Dissociation – Payout

- Current law gives a limited partner the right to receive fair value at the time of dissociation based on the right to receive partnership distributions.
- The committee substitute eliminates the right to receive payout on dissociation. The dissociating partner instead becomes a transferee of that partner's "transferable interest" (i.e. the economic rights or right to receive a future distribution). (s. 620.1602, F.S.)

General Partner Voluntary Dissociation

- Under current law, a general partner has the right and power to withdraw from the partnership at any time subject to damages provided by the partnership agreement for withdrawal in breach of the agreement and for set-off of damages against any right to distribution.
- The language in the committee substitute is essentially the same as current law, but specifies that wrongful dissociations include those in breach of an express provision of the partnership agreement and those that occur before termination of the agreement under certain circumstances. (ss. 620.1603 and 620.1604, F.S.)

General Partner Involuntary Dissociation

- Current law provides for involuntary dissociation of a general partner under a variety of causes, including removal pursuant to the partnership agreement, assignment by a partner for the benefit of creditors, petition in bankruptcy, adjudication of bankruptcy or insolvency, petition for reorganization or similar relief, or partnership is dissolved (where another partnership is created or a partner dies).
- The committee substitute maintains and clarifies existing law and slightly expands the list of events causing dissociation while staying within the framework set by FRUPA. (s. 620.1603, F.S.)

General Partner Dissociation – Payout

- Current law provides for a right to receive fair value at the time of dissociation based on the general partner's right to share in distributions.

- The committee substitute will eliminate the right to payout at time of dissociation, instead making the partner the transferee of its own "transferable interest" (right to receive future distributions). (s. 620.1605, F.S.)

Transfer of Partner Interest

- Current law provides that economic rights are fully transferable, but management rights and partner status are not transferable. A partner who transfers all of his/her interest loses partnership status.
- The committee substitute follows current law but allows for limitations on the transfer of a transferable interest and reverses current law by allowing a partner who transfers a transferable interest to remain a partner subject to all partner duties and obligations. The committee substitute also allows the partnership to place a legend on certificates representing transferable interests that will identify any restrictions on the interests. (s. 620.1702, F.S.)

Rights of Creditor of Partner

- Current law limits the rights of a creditor of a partner to charging the partnership interest of the partner and gives the creditor rights of an assignee.
- The language of the committee substitute would limit satisfaction of a judgment to a judgment lien where the property sought by the creditor is a judgment debtor's interest in a partnership. (s. 620.1703, F.S.)

Dissolution by Partner Consent

- Current law requires dissolution by unanimous written consent of all general and limited partners.
- The committee substitute does not change current law. (s. 620.1801, F.S.)

Dissolution Following Dissociation of a General Partner

- Current law makes dissolution automatic upon dissociation of a general partner unless all partners agree to continue the business and, if there is no remaining general partner, they all agree to appoint a replacement general partner.
- The committee substitute provides that if at least one general partner remains, no dissolution occurs unless within 90 days after the dissociation all partners consent to dissolve the limited partnership. If no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation unless the partners consent to continue the business and admit at least one new general partner and that new partner is admitted. (s. 620.1801, F.S.)

Filings Related to Dissolution and Winding-Up

- Current law requires a certificate of cancellation of the limited partnership to be filed when the limited partnership dissolves and winding-up activities are completed.
- The committee substitute requires a limited partnership to file a certificate of dissolution when it voluntarily dissolves and allows the partnership to file a statement of termination indicating that winding-up has been completed and that all partnership activities have terminated. (ss. 620.1801 and 620.1803, F.S.)

Procedures for Barring Claims against a Dissolved Limited Partnership

- Current law does not address this issue.
- The committee substitute adopts similar provisions of the general corporations law, ch. 607, F.S., and provides for giving notice, responding to, paying and making provisions for claims and allows partnerships using these provisions to bar known claims after three years and unknown claims after four years. (ss. 620.1806 and 620.1807, F.S.)

Conversions and Mergers

- Current law permits mergers of a limited partnership with other business organizations, the conversion of a limited partnership into a general partnership, and the conversion of a general partnership into a limited partnership. Appraisal rights are available to dissenting partners in a merger transaction.
- The committee substitute provides comprehensive and liberal provisions for conversion of another business organization to a limited partnership, the conversion of a limited partnership into another organization, and the merger of a limited partnership with another organization. The term organization is broadly defined to include: a corporation; a common law or business trust or association; a real estate investment trust; a general partnership, including a limited liability limited partnership; a limited partnership, including a limited liability limited partnership; a limited liability company; or any other domestic or foreign entity that is organized under a governing law or other applicable law except for a not-for-profit organization unless it is the surviving entity. The conversion provisions mirror those provided for corporations and limited liability companies in sections 1, 6-9, 10, and 11 of the committee substitute.

This section also provides fees for filing documents with the DOS.

Sections 17 –22 relate to **general partnerships**, to incorporate organizational and administrative reforms implemented in the FRULPA-2005, created in section 15 of this bill, as developed by NCCUSL and modified by the Florida Bar.

Section 17 amends s. 620.8103, F.S., with respect to nonwaivable provisions of a partnership agreement to remove the prohibition against changing of notice requirements for conversion or merger of a partnership.

Section 18 amends s. 620.8105, F.S., to provide for filing of a certificate of merger, certificate of conversion, or registration statement and allows the documents to specify a delayed effective date.

Section 19 amends s. 620.81055, F.S., to provide that the DOS shall collect a certificate of conversion filing fee of $25 when an entity is required by law to submit one with a filing.

Section 20 amends s. 620.8404, F.S., to remove a “without limitation” clause in describing a partner’s duty of loyalty to the partnership and partners, making the listed duties the only duties required under a duty of loyalty.

Section 21 creates multiple sections of the Florida Statutes addressing FRUPA.

This section creates s. 620.8911, F.S., to provide definitions.

This section creates s. 620.8912, F.S., to authorize the conversion of another organization into a partnership and a partnership into another organization if the other organization's governing law authorizes such conversion, the conversion is permitted by the law of the jurisdiction that enacted the governing law, and the other organization complies with its governing law in effecting the conversion. The entities must prepare a plan of conversion that includes the name and form of the organization before the conversion, the name and form after conversion, the terms and conditions of the conversion and the organizational documents of the converted organization.

This section creates s. 620.8913, F.S., to provide that the plan of conversion must be consented to by all of the partners of the converting partnership and must be in or evidenced by a record; amendments to the plan for conversion must have similar approval by all partners.

This section creates s. 620.8914, F.S, to provide that once the plan of conversion is approved, the converting partnership must file a registration statement with the DOS which includes a statement that the partnership has been converted into another entity. Included in the registration statement must be the name and form of the organization and the jurisdiction of its governing law, the date the conversion is effective, a statement that the conversion was approved, and a statement that the conversion was approved as required by the governing law of the converted organization. An organization converting into a partnership regulated under FRUPA must also file certificates of registration and conversion.

This section creates s. 620.8915, F.S., to provide that once the organization has converted, it is considered the same entity that existed before conversion. When the conversion takes effect, title to all real estate and other property or any interest therein owned by the converting organization at the time of the conversion remains vested in the converted organization. All debts, liabilities and obligations of the converted organization continue and all actions or proceedings pending by or against the converting entity continue as though the conversion never occurred. All the rights, privileges, powers, immunities, and purposes of the converting organization remain vested in the converting organization. If the converted organization is a foreign organization, it consents to the jurisdiction of Florida courts. If it is also not authorized to transact business in Florida, it shall appoint the DOS as its agent for service of process.

This section creates s. 620.8916, F.S., to permit the merger of a partnership with one or more other organizations pursuant to a plan of merger if the governing law of each of the other organizations authorizes the merger, the merger is permitted by the law of each jurisdiction that enacted those governing laws, and each of the other organizations complies with its governing law. The plan of merger must include the name and form of each organization, the name and form of the surviving organization, and the terms and conditions of the merger.

This section creates s. 620.8917, F.S., to provide that the plan of merger must be consented to by all of the partners and must be evidenced in a record.

This section creates s. 620.8918, F.S., to provide that after the plan is approved, a certificate of merger must be signed by all partners of each preexisting partnership and a representative of

each other preexisting organization. The plan must include the name and form of each organization and the jurisdiction of its governing law, the name and form of the surviving organization and the jurisdiction of its governing law, and if the surviving organization is created by the merger, a statement to that effect. Also necessary is the date the merger is effective, any amendments to the organizational document that created the organization, a statement that the merger was approved by each organization according to its governing law, and a street and mailing address if the surviving organization is a foreign organization not authorized to transact business in Florida. The committee substitute provides for the effective date of the merger depending on the nature of the organization.

This section creates s. 620.8919, F.S., to provide that once the merger is effective, the surviving organization continues and the organizations merged into the surviving organization cease to exist as separate entities. Title to all real estate, any other property, or any interest owned therein by the merging organizations, vests in the surviving organization. All debts, liabilities, and obligations of the merging organizations, and all actions or proceedings pending by or against the merging organizations, continue as though the merger never occurred. All the rights, privileges, powers, immunities, and purposes of the merging organizations remain vested in the surviving organization. If the surviving organization is a foreign organization, it consents to the jurisdiction of Florida courts. If it is not authorized to transact business in Florida, it shall appoint the DOS as its agent for service of process.

This section creates s. 620.8920, F.S., to limit the approval of a conversion or merger if a partner of a converting or partnership in merger will have personal liability with respect to the converted or surviving organization. In such cases, the partner must consent to the conversion or merger unless the partnership agreement provides for approval with consent of fewer than all partners and the partner has consented to that provision in the partnership agreement. If an amendment to a statement of qualification for a limited liability partnership revokes its status as a limited liability partnership, each general partner must consent or the amendment is ineffective. Unanimous consent of the partners is required unless the partnership agreement provided for amendment with the consent of fewer than all partners and each partner that does not consent to the amendment has consented to the provision in the partnership agreement.

This section creates s. 620.8921, F.S., to provide that a person who was a partner in or dissociated as a partner from a converting or merging partnership is not released from partner liability by virtue of a conversion or merger. The committee substitute sets forth the applicable contribution rights for a partner from other persons arising out of pre-conversion and pre-merger acts. This section also makes partners in preexisting entities prior to conversion or merger personally liable to third parties for transactions entered into by the converted or surviving entity and the third party when the third party had no notice of a conversion or merger and reasonably believed that the converted or surviving business was a partnership that is not a limited liability limited partnership and that the partner is a partner in the converted or surviving partnership. This section provides similar provisions for liability of a dissociated partner, except for a requirement that less than two years have elapsed since the dissociation at the time the third party enters into the transaction

This section creates s. 620.8922, F.S., to provide that an act by a person who, immediately before a conversion or merger became effective, was a partner in a converting or merging partnership

binds the converted or surviving organization after the conversion or merger if before the conversion or merger the act would have bound the limited partnership, and at the time of the transaction the third party does not have notice of the conversion or merger and reasonably believes that that converted or surviving business is the converting or merging partnership and that the person is a partner of the partnership. This section provides similar provisions for dissociated partners, except for a requirement that less than two years have elapsed since the dissociation at the time the third party enters the transaction.

This section creates s. 620.8923, F.S., to provide that s. 620.8911, F.S., through s. 620.8922, F.S., do not preclude conversions and mergers under other law, nor do those sections authorize any act prohibited by any other applicable law or change the requirements of any law or rule regulating a specific industry.

Section 22 amends s. 620.9104, F.S., to expand the description of "activities not constituting transacting business" for a foreign limited liability partnership to include, without limitation:

- Maintaining bank accounts in financial institutions;
- Owning and controlling a subsidiary corporation incorporated in or transacting business within Florida or voting the stock of any corporation it has lawfully acquired;
- Owning a limited partnership interest in a limited partnership that is doing business in Florida, unless such limited partner manages or controls the partnership or exercise the powers and duties of a general partner; or
- Owning, without more, real or personal property.

Section 23 amends s. 607.11101(7), F.S., to revise conform cross-references to changes proposed in committee substitute.

Section 24 provides for repeal, effective on January 1, 2006, of the following sections of law:

- Section 608.4384, F.S., relating to rights of dissenting members of a limited liability company;
- Part I of ch. 620, F.S., the "Florida Revised Uniform Partnership Act (1986)," which is replaced by Florida Revised Uniform Partnership Act (2005) in section 15 of the bill; and
- Sections 620.8901 – 620.8908, F.S., relating to the conversion of a partnership to a limited partnership and of a limited partnership to a partnership, which is replaced by multiple sections created in section 20 of the bill.

Section 25 provides an effective date of January 1, 2006, except as otherwise provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 12 authorizes the Department of State (DOS) to impose a fee of $25 for the filing of a certificate of conversion of a limited liability company.

Section 16 revises the filing fee provisions under Florida Revised Uniform Limited Partnership Act (FRULPA), eliminating a current fee structure based in part on the anticipated amount of capital contributions of the limited partners that is allocated for the purpose of transacting business, calculated at a rate of $7 per $1,000 of such contributions with a floor of at least $52.50 and a cap of $1,750, and replacing it with a flat fee for each type of filing required or permitted by law. According to the DOS, the revision to the fee law will create an increase in fees for approximately 25 percent of partnership entities, a decrease for approximately 25 percent of partnership entities, and a neutral impact on approximately 50 percent of partnership entities. The DOS reports that the overall effect of the fee changes will be neutral and that the fee structure will be less complicated.

Section 19 provides that the DOS must collect a certificate of conversion filing fee of $25 when an entity is required by law to submit one along with a filing. However, the DOS expects the fees collected under this section will be minimal.

B. Private Sector Impact:

See Tax/Fee Issues, above.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.